

Small Business Administration

§ 117.13

meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact the Chief, Office of Civil Rights Compliance, for information and assistance regarding the complaint resolution process.

(e) SBA will return to the complainant any complaint filed under the jurisdiction of this regulation, but found to be outside the jurisdiction of this regulation, and will state the reason(s) why it is outside the jurisdiction of this regulation.

§ 117.12 Mediation.

(a) SBA shall, after ensuring that the complaint falls within the coverage of this Act and all information necessary for further processing is contained therein, unless the age distinction complained of is clearly within an exception, promptly refer the complaint to the Federal Mediation and Conciliation Service (FMCS).

(b) SBA shall, to the extent possible, require the participation of the recipient and the complainant in the mediation process in an effort to reach a mutually satisfactory settlement of the complaint or make an informed judgment that an agreement is not possible. Both parties need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach a mutually satisfactory resolution of the complaint during the mediation period, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it.

(d) A copy of the written mediation agreement will be referred to SBA, and no further action will be taken unless it appears that either the complainant or the recipient (or other alleged discriminator subject to this part) fails to comply with the agreement.

(e) If at the end of 60 days after the receipt of a complaint by SBA, or at any time prior thereto, an agreement is reached or the mediator determines

an agreement cannot be reached through mediation, the agreement or complaint will be returned to SBA.

(f) This 60-day period may be extended by the mediator, with the concurrence of SBA for not more than 30 days if the mediator determines that an agreement will likely be reached during the extended period.

(g) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained during the course of the mediation process without prior approval of the head of the agency appointing the mediator.

§ 117.13 Investigation and resolution of matters.

(a) SBA will make a prompt investigation whenever a compliance review indicates a possible failure to comply with this part by the recipient and additional information is needed by SBA to assure compliance with this part, or when an unresolved complaint has been returned by the FMCS, or when it appears that the complainant or the recipient is failing to comply with a mediation agreement. The investigation shall include a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient is complying, is not complying, or has failed to comply with this part.

(b) *Resolution of matters.* If an investigation indicates a failure to comply with this part, SBA will so inform the complainant, if applicable, and the recipient that the matter will be resolved by informal means that are mutually agreeable to the parties, whenever possible.

(1) If, during the course of an investigation, the matter is resolved by informal means, SBA will put any agreement in writing and have it signed by the parties and an authorized official of SBA.

(2) If investigation indicates a violation of the Act or these regulations, SBA will attempt to achieve voluntary

compliance. If SBA cannot achieve voluntary compliance, it will begin enforcement as described in § 117.15.

(3) If an investigation does not warrant action, SBA will so inform the complainant, if applicable, and the recipient in writing.

§ 117.14 Intimidating or retaliatory acts prohibited.

No complainant, recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part or because an individual or group has made a complaint, testified, assisted, or participated in any manner in an investigation, review, enforcement process, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, mediation, or judicial proceeding.

§ 117.15 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part by an applicant or recipient and if the noncompliance or threatened noncompliance cannot be resolved by informal means, compliance with this part may be effected by suspending, terminating, or refusing any financial assistance approved but not yet disbursed to an applicant. In the case of loans partially or fully disbursed, compliance with this part may be effected by calling, canceling, terminating, accelerating repayment, or suspending in whole or in part the Federal financial assistance provided. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) In addition, compliance may be effected by any other means authorized by law. Such other means may include, but are not limited to:

- (i) Action by SBA to accelerate the maturity of the recipient's obligation;
- (ii) Referral to the Department of Justice with a recommendation that appropriate proceedings be brought to

enforce any rights of the United States under any law of the United States or obligations of the recipient created by the Act or this part; and

(iii) Use of any requirement of or referral to any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(3) If there appears to be a failure or threatened failure to comply with this part by an SBA program office or official, the Chief, Office of Civil Rights Compliance, through the Director, Office of Equal Employment Opportunity and Compliance, will recommend appropriate corrective action to the Administrator. Any resulting adverse action against an SBA employee shall follow Office of Personnel Management and SBA procedures for such action.

(b) *Noncompliance with §§ 117.7 and 117.9.* If an applicant fails or refuses to furnish an assurance required under § 117.7, or fails to provide information or allow SBA access to information under § 117.9 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to those sections, Federal financial assistance may be deferred for a period not to exceed 60 days after the applicant has received a notice for an opportunity for hearing under § 117.16, or unless a hearing has begun within that time, or the time for beginning the hearing has been extended by mutual consent of the recipient and the Agency, for purposes of determining what constitutes mutual consent, the Agency shall be deemed to have consented to any extension requested by the recipient and granted by the administrative law judge (hearing officer), whether or not the Agency initially approved the extension. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the applicant or recipient.

(c) SBA will not take action toward accelerating repayment, suspending, terminating, or refusing financial assistance until:

- (1) SBA has advised the applicant or recipient of the failure to comply and has determined that compliance cannot be secured by voluntary means;